



**UNITED STATES DEPARTMENT OF COMMERCE**  
**Patent and Trademark Office**

Address: COMMISSIONER OF PATENTS AND TRADEMARKS  
Washington, D.C. 20231

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/032,893	02/27/98	BIESER	41824B

IM22/1130

OSBORNE K MCKINNEY  
B 1211  
2301 BRAZOSPORT BOULEVARD  
FREEPORT TX 77541

EXAMINER

JUSKA, C

ART UNIT	PAPER NUMBER
----------	--------------

1771

DATE MAILED: 11/10/00

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

# Office Action Summary

Application No.  
09/032,893

Applicant(s)

Belser et al.

Examiner

Cheryl Juska

Group Art Unit

1771



☒ Responsive to communication(s) filed on Oct 23, 2000

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle* 935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

## Disposition of Claim

☒ Claim(s) 1-6 and 9-12 is/are pending in the applicat

Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration

☐ Claim(s) \_\_\_\_\_ is/are allowed.

☒ Claim(s) 1-6 and 9-12 is/are rejected.

☐ Claim(s) \_\_\_\_\_ is/are objected to.

☐ Claims \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some\* ☒ None of the CERTIFIED copies of the priority documents have been

☐ received.

☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

☐ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

— SEE OFFICE ACTION ON THE FOLLOWING PAGES —

Art Unit: 1771

## **DETAILED ACTION**

### ***Continued Prosecution Application***

1. The request filed on October 23, 2000, for a Continued Prosecution Application (CPA) under 37 CFR 1.53(d) based on parent Application No. 09/032,893 is acceptable and a CPA has been established. An action on the CPA follows.
2. Receipt is acknowledged of the statement requesting that Joseph Dibbern, Charles Diehl, James Goins, David Kelley, Rexford Maugans, Osborne McKinney, and Robert Turley be deleted as a named inventor which was filed with the Continued Prosecution Application (CPA) on October 23, 2000. The inventorship has been corrected as requested.

### ***Response to Amendment***

3. Preliminary Amendment B, submitted as Paper No. 13 on October 23, 2000, has been entered. Claim 1 has been amended as requested. Claims 1-6 and 9-12 are pending, with claim 1 being independent.

### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are

Art Unit: 1771

such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-6 and 9-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 5,741,594 issued to Jialanella in view of WO 93/15909 issued to Fink.

Claims 1-6 and 10-12 were previously rejected as being anticipated by the cited Jialanella patent. Claim 9 was previously rejected as being obvious over said patent. Applicant has amended independent claim 1 to limit the homogeneously branched ethylene (HBE) polymer to the adhesive backing, wherein said adhesive is in intimate contact with the primary backing and has substantially penetrated and consolidated the fibers attached to said primary backing.

As discussed in prior Office Actions, Jialanella teaches the claimed HBE polymer as an adhesive in a carpet laminate. Jialanella is silent with respect to the claimed intimate contact, penetration, and consolidation.

Fink discloses a carpet comprising a tufted primary backing, an adhesive backing, and secondary backing (abstract). Specifically, the adhesive backing is an extruded thermoplastic polyolefin sheet which is "integrally fused" to the bottom surface of the primary backing (page 11, lines 2-10). With respect to Figure 1, Fink states, "Likewise, there may be a mechanical bond between the primary backing 5 and the extruded sheet 15 and between the face fiber 10 and the extruded sheet 15 resulting from the thermoplastic polyolefin polymer flowing between and around the fibers making up the primary backing 5 and the face fibers 10." (Page 11, lines 23-29.) Fink continues (page 11, line 30-page 12, line 4):

Art Unit: 1771

While not shown, the tufts of carpet face fibers 10 may also form a heat bond with the extruded sheet 15. Further, the spaces 75 between the primary backing 5 and the extruded sheet 15 may be larger or smaller depending on the penetration of the extruded sheet 15 into the primary backing 5 during manufacture. In fact, the extruded sheet 15 may more or less conform to the shape of the bottom surface of the primary backing 5. Thus, there may be little, if any, space 75 between the extruded sheet 15 and the primary backing 5.

Thus, Fink clearly teaches Applicant's claimed 'intimate contact' occurs when an adhesive is applied between a primary backing and secondary backing. Additionally, Fink teaches the adhesive penetrates and consolidates the fibers tufted into the primary backing in that said adhesive melts and flows in and around said fibers.

Therefore, it would have been obvious to one skilled in the art to heat the adhesive backing disclosed by Jialanella to the extent that said adhesive penetrates and consolidates the primary backing and the tufts therein, as is clearly taught by Fink. Motivation to do so would be to enhance the bond between the tufts, primary backing, and secondary backing in order to improve the physical properties desired in carpets (i.e., delamination strength, tuft bind strength, and fuzz rating, etc.).

6. Claims 1-6 and 9-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over the cited Fink patent in view of the cited Jialanella patent.


In the alternative, the pending claims are rejected as being obvious over the cited Fink patent, which teaches the claimed carpet structure, in view of the cited Jialanella patent, which discloses the specific adhesive. It would have been obvious to one of ordinary skill in the art to substitute the Jialanella homogeneously branched polyethylene adhesive for the thermoplastic

Art Unit: 1771

polyolefin adhesive disclosed by Fink. Motivation to do so would be the explicitly teaching by Jialanella that said adhesive is suitable for carpet backings. Therefore, claims 1-6 and 9-12 are rejected as being obvious over the cited prior art.

*Conclusion*

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cheryl Juska whose telephone number is (703) 305-4472. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris, can be reached at (703) 308-2414. The official fax number for this TC 1700 is (703) 872-9310 and, for After Final communications, (703) 872-9311.



CHERYL JUSKA  
PATENT EXAMINER

cj

November 27, 2000